

United States District Court
District of South Dakota
Western Division

FILED

JUN 17 2015

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EAGLE AVIATION, INC.

CIV. 15-5046

Plaintiff,

COMPLAINT

vs.

CONTINENTAL WESTERN GROUP
ON BEHALF OF CONTINENTAL
WESTERN INSURANCE COMPANY,
A W. R. BERKLEY COMPANY

Defendant.

* * * * *

COMPLAINT AND DEMAND FOR JURY TRIAL

Parties and Jurisdiction

COMES NOW Plaintiff, Eagle Aviation Inc., through his attorney, Aaron Eiesland, and for his cause of action states and alleges as follows:

1. Eagle Aviation Inc. is a resident of Lawrence County, South Dakota, located at 300 Aviation Place, Spearfish, South Dakota 57783.
2. Eagle Aviation Inc. was insured by Defendant Continental Western Insurance Company, with a commercial insurance policy no. CP 2420611-29 (Commercial Policy).
3. Continental Western Insurance Company does business in South Dakota, including the sale of the Commercial Policy to Eagle Aviation Inc.
4. Defendant Continental Western Insurance Company was at all times material, an Iowa Company, with a principal place of business in Des Moines Iowa.

5. The Jurisdiction is proper in this court pursuant to 28 USC § 1332 in that Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds \$75,000.

**COUNT I – CONTINENTAL WESTERN INSURANCE COMPANY’S
BREACH OF CONTRACT**

6. Eagle Aviation re-alleges and incorporates by reference all prior paragraphs as though they were fully set forth herein.
7. Eagle Aviation Inc. is an insured under the Commercial Policy.
8. Eagle Aviation Inc. sustained hail damage on June 22, 2013, for which their property was insured under the Commercial Policy.
9. Eagle Aviation immediately gave Continental Western Insurance Company notice of the hail claim.
10. Eagle Aviation’s Commercial Policy provides for replacement cost value coverage, and a \$1,000 deductible.
11. Eagle Aviation obtained a repair estimate from a reputable contractor, Infinity Consultants, which repair estimate totaled \$452,889.36.
12. Continental Western Insurance Company only paid their insured \$19,390.54 for the hail claim.
13. Continental Western Insurance Company refused to make any further payment for the hail claim.
14. The repair estimate referred to in paragraph 11 above was provided to Continental Western Insurance Company.
15. Continental Western Insurance Company refused to change its position and make the additional payments.
16. Continental Western Insurance Company’s conduct is a breach of the contract of insurance reflected in the Commercial Policy.
17. As a result of Continental Western Insurance Company’s refusal to honor its contract, Eagle Aviation Inc. was damaged.

18. Continental Western Insurance Company's breach of its insurance contract has damaged Eagle Aviation in the amount of approximately \$432,498.82.

**COUNT II – CONTINENTAL WESTERN INSURANCE COMPANY'S
BREACH OF THE DUTY OF
GOOD FAITH AND FAIR DEALINGS**

19. Eagle Aviation Inc. re-alleges and incorporates by reference all prior paragraphs as though they were fully set forth herein.
20. Every contract in South Dakota includes the duty of good faith and fair dealings.
21. Continental Western Insurance Company did not honor its duty of good faith and fair dealings with respect to Eagle Aviation Inc.
22. Continental Western Insurance Company preferred itself and its own financial interests, in contravention of its duty of good faith and fair dealings, over that of its insured.
23. Continental Western Insurance Company wrongfully interpreted the Commercial Policy in their own best interest, and against the interests of their insured.
24. Continental Western Insurance Company breached the duty of good faith and fair dealings it owed to Eagle Aviation Inc.
25. As a result of Continental Western Insurance Company's breach of its duty of good faith and fair dealings, Eagle Aviation Inc. was damaged.

**COUNT III – CONTINENTAL WESTERN INSURANCE COMPANY'S
BAD FAITH**

26. Eagle Aviation Inc. re-alleges and incorporates by reference all prior paragraphs as though they were fully set forth herein.
27. Continental Western Insurance Company drafted the Commercial Policy.
28. GC3 Consulting, hired by Continental Western Insurance Company, admitted to physical damage on all buildings, including the polyurethane coating on Building 1, structural damage on Building 2, and damage on Building 3 (Covered Damages).

29. Ultimately, Continental Western Insurance Company refused to make payment under the commercial insurance policy for the covered loss.
30. Continental Western Insurance Company further agreed to replace all siding on each building, but ultimately refused to make payment under the commercial insurance policy.
31. Continental Western Insurance Company later agreed to make payment of the undisputed amounts rightfully owed to Eagle Aviation Inc., but ultimately refused to make payment under the commercial insurance policy.
32. As a result of Continental Western Insurance Company's numerous acts of bad faith, demonstrated in their conduct toward Eagle Aviation Inc., they were damaged.

**COUNT IV – CONTINENTAL WESTERN INSURANCE COMPANY'S
BREACH OF FIDUCIARY DUTY**

33. Eagle Aviation Inc. realleges and incorporates by reference all prior paragraphs as though they were fully set forth herein.
34. Continental Western Insurance Company owed a fiduciary duty to its insured, Eagle Aviation Inc.
35. Continental Western Insurance Company preferred its interests over that of its insured.
36. Continental Western Insurance Company breached its fiduciary duty to Eagle Aviation Inc.
37. As a result of Continental Western Insurance Company's breach of its fiduciary duty, Eagle Aviation Inc. was damaged.

**COUNT V – CONTINENTAL WESTERN INSURANCE COMPANY'S
RESPONSIBILITY FOR ATTORNEY'S FEES**

38. Eagle Aviation Inc. realleges and incorporates by reference all prior paragraphs as though they were fully set forth herein.
39. Continental Western Insurance Company refused to pay the full amount of the loss as required under the Commercial Policy.

40. Continental Western Insurance Company's refusal to fully pay for the covered loss due to wind and hail was without reasonable cause.
41. Continental Western Insurance Company should be required to pay a sum to Eagle Aviation Inc. as reasonable attorney's fees for the cost of Eagle Aviation Inc. pursuing and recovering the amounts owed to them under the Commercial Policy.

**COUNT VI – CONTINENTAL WESTERN INSURANCE COMPANY
IS RESPONSIBLE FOR EXEMPLARY DAMAGES**

42. Eagle Aviation Inc. re-alleges and incorporates by reference all prior paragraphs as though they were fully set forth herein.
43. Continental Western Insurance Company committed the torts of bad faith and breach of fiduciary duty against Eagle Aviation Inc.
44. Continental Western Insurance Company's torts were willful, malicious, and/or wanton.
45. Continental Western Insurance Company must be punished for their conduct, and an example must be made of them.
46. Exemplary damages should be awarded against Continental Western Insurance Company to deter this type of conduct in the future.

WHEREFORE, Plaintiff prays for a judgment and decree against Defendant granting the following relief:

- A. For the contractual amounts owing for the duty to pay under the Commercial Policy;
- B. For attorney's fees pursuant to SDCL 58-12-3;
- C. For a reasonable amount to be determined by a jury for the tortious conduct of Continental Western Insurance Company against Eagle Aviation Inc.;
- D. For exemplary damages against Continental Western Insurance Company in an amount to be determined by a jury; and

- E. For such other and further relief, including prejudgment interest, as the court may deem equitable and just under the circumstances.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES.

DATED this 17th day of June, 2015.

JOHNSON EIESLAND LAW OFFICES, P.C.



By: _____

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